valuable to all. Equally important is the author's judicial position taken on such live questions as Injunction—an attitude which tends to call upon his readers, radical though they may be, for the sober second thought on all these great questions, which Dr. Von Holst once called the saving feature in a democracy.

The book under review is divided into two main parts, the first of which deals with the historical character of our institutions, the second setting forth in a succinct, if not always in the most readable, form the provisions of the leading constitutional sources on the more important questions.

If adverse criticism were to be passed it might lie in this, that the historical portion dealing with extensive areas of English constitutional history appears rather sketchy, and does not perhaps make clear enough that many of the steps in this development are controverted points among the greatest scholars of English legal and political history. Very few of these questions can be really considered as settled. The fact that it is a broad historical essay tends, of course, to lessen the force of this objection. The work is such as should appeal to legal students on both sides of the water and should prove of value to students of the law in either its broader or more technical aspect.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By FREDERICK H. COOKE. New York: Baker, Voorhis & Co. 1908. pp. xcii, 302.

The profession is indeed to be congratulated upon the timely appearance of this well-considered and carefully argued work, dealing with a subject which has in the last two decades given rise to perhaps the most important and conspicuous legal controversies within the domain of Constitutional Law and Political Economy. At a time when the outlawry of the individual by administrative proclamation and without due process of law, and when "the disparagement of the courts" in the endeavor to undermine their position as the highest interpreters and defenders of the constitutional rights and immunities of the individual, would seem to be looked upon by the public as an executive function and as an evidence of large statesmanship, it is well that the legal profession turn anew to the study of the Constitution and learn from that great bulwark of human liberty the "lessons of the fathers."

The author has well performed the difficult task undertaken,—to reconcile the decisions which have grown up "in a sporadic and haphazard fashion" and, amid the "codeless myriad of precedent," to discover "the underlying unifying principles" which were largely inadequately comprehended, or entirely lost sight of by the courts. His definition of the word "commerce," as used in the constitutional provision in question, is to be commended in the present state of the law, but will doubtless have to be abandoned in the progressive development of the subject, which it is apparent is taking place, and which will be accelerated in the years to come, as the importance of the Commerce Clause of the National Constitution becomes even more manifest.

The author's theses are as follows: Commerce as used in the Commerce Clause of the Constitution is "transportation, including that of person, tangible property and of intelligence." The regulation of interstate and foreign commerce by the Federal Government is not a concurrent, but an exclu-

sive power of the Federal Government, and only in exceptional cases can such commerce be regulated under the authority of the State. Such exceptional cases include (1) the establishment and maintenance of means of transportation; (2) the control of persons and property; (3) the regulation of the conduct and liability of those engaged in such transportation when such regulation affects (1) the public generally; (2) those enjoying the benefit of transportation wholly within a State, but not (3) when such regulation affects those enjoying the benefit of the interstate or foreign transportation.

The author has had great difficulty in attempting to reconcile the decisions with the propositions laid down by him, and, in fact, is obliged to admit that it is impossible to reconcile even some of the leading cases. He has, however, with conspicuous ability, argued his points, set forth the unifying principles underlying most of the cases, and with clearness surveyed the dividing line between the power of Congress and that of the States within the domain of the commerce clause, as already drawn by the decisions. His work will not only be of value to the practising attorney, but to the courts themselves, in further interpreting the Commerce Clause.

It is unfortunate that the work on so important a subject—one which to-day engrosses so much of the public mind—should not have been written in a more readable style, and that much that is in the foot-notes, which comprise more than one-half of the printed matter of the book, should not have been incorporated in the text. And it is regrettable that this otherwise commendable work should have been written in the "dry language of the law" and be lacking to so great a degree in that terseness and limpidity of expression and beauty of language which make many of the early law reports attractive reading, and which characterize the work of the great jurist and cultured scholar on the bench.

The author's work is entitled to high praise for its evidences of most patient research and exhaustive study of the numerous authorities, their careful and logical arrangement, the ability with which he has deduced therefrom the underlying principles and has selected for fearless attack such of the authorities as are not based upon sound reasoning.

HANDBOOK OF THE LAW OF EVIDENCE. By JOHN JAY MCKELVEY. Second Edition: St. Paul, Minn.: West Publishing Co. 1907. pp. xvii, 540.

This book is probably the most popular and extensively used of all the books in the Hornbook series. It should prove even more serviceable in its new and enlarged form. The references have been brought down to date. Thus in connection with the subject of Presumption, reference is made to the much discussed charge of Mr. Justice Fitzgerald in *People* v. *Thaw*, and the author claims, at page 102 in an interesting foot-note, that the learned Justice has misconceived the principle regarding the burden of proof where the question of sanity is at issue. While the citations are not numerous, an examination by the writer reveals a uniform correctness and pertinancy to the point considered in the text—something somewhat unusual in these days of ill-digested and misapplied authorities. Chapters particularly useful are those of judicial notice and admissions, the latter of which has been rewritten and much enlarged since the first edition.

As a rule, the author seems to have accurately and concisely stated the